

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:10cv179**

**KAREN M. MILLER, on behalf of
Curtis B. Fink Jr. and Jacob Wayne
Fink, Children of Curtis B. Fink,
deceased,**

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

ORDER OF REMAND

THIS MATTER is before the Court on Defendant's Unopposed Motion for Entry of Judgment and Reversal and Remand pursuant to Sentence Four of 42 U.S.C. §405(g) [Doc. 3].

Sentence four of 42 U.S.C. §405(g) provides in pertinent part, "[t]he court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." The Defendant, with Plaintiff's consent, moves for reversal of the decision of the ALJ and remand for further administrative proceedings.

Specifically, the parties ask that the Appeals Council complete the administrative review of the claimant's record, as occasioned by the

location of Plaintiff as an acceptable substitute party for the deceased claimant. Upon remand, the Appeals Council should reopen the deceased claimant's request for review, consider the request, and take the appropriate action.

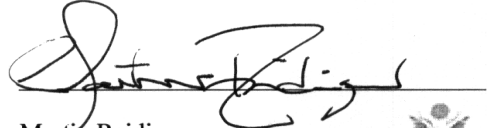
Based on the representations of the parties, the Court finds that reversal and remand are appropriate. Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

IT IS, THEREFORE, ORDERED that the parties' Consent Motion for Reversal and Remand pursuant to Sentence Four of 42 U.S.C. §405(g) [Doc. 11] is hereby **GRANTED**; and that the decision of the Commissioner of Social Security is hereby **REVERSED** and the case is **REMANDED**.

IT IS FURTHER ORDERED that upon remand, the Appeals Council shall reopen the deceased claimant's request for review, consider the request, and take the appropriate action.

A Judgment of Remand is entered simultaneously herewith. The Clerk of Court is notified that this is a final judgment closing the case.

Signed: November 11, 2010



Martin Reidinger
United States District Judge

